1756

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE	
REPLY TO OFFICE ACTION DATED SEPTEMBER 25, 2003	Atty. Docket No. (Opt.) **TEX1100**

Applicant **Ryza, et al.**	
Application Number **10/063,049**	Filed **March 14, 2002**
For **Process and Apparatus for Removing a Contaminant from a Substrate**	
Group Art Unit **1756**	Examiner **Duda, K.**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Certification Under 37 C.F.R. § 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on **October 24, 2003**.

Carolyn J. Williams

Dear Sir:

In response to the Office Action mailed September 25, 2003, Applicants respectfully traverse the restriction requirement for the reasons set forth below but elects to prosecute claims 1-25 of Group I if the restriction requirement is not withdrawn. Note that Applicants do not make any admission that the groups of claims as defined in the Office Action are independent of each other, not independent of each other, distinct from each other, or not distinct from each other.

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. (M.P.E.P. § 803, emphasis added). Proper examination of the process claims will involve searching for apparatuses that can be used with the process. In other words, a proper search of the process claims will yield references with apparatuses used by those processes. Due to the co-extensive searching, searching and examination of the entire application must be made in accordance with the M.P.E.P. Therefore, Applicants respectfully request withdrawal of the restriction requirement for not meeting the search burden requirement set forth in the M.P.E.P.

The Office Action uses an "independent OR distinct" standard when the language in 35 U.S.C. § 121 clearly requires "independent AND distinct" (emphasis added). When statutory interpretation is at issue, the plain and unambiguous meaning of a statute prevails in the absence of clearly expressed legislative intent to the contrary. *In re Donaldson*, 29 U.S.P.Q.2d 1845, 1848. The Office Action fails to point out any language within the legislative history of the statute to support "AND" (conjunctive connector) as meaning "OR" (disjunctive connector). The fact that the PTO may have failed to adhere to a statutory mandate over an extended period of time does not justify its continuing to do so. *Id.* at 1849. The Office Action fails to point to any binding and compelling statutory, federal rule or judicial authority to support a position that "AND" in the statute means "OR." The Office Action does not address independence between the groups of claims at all. The fact that the Office Action does not address independence between the groups likewise causes the restriction requirement to be improper. Therefore, Applicants respectfully request withdrawal of the restriction requirement for not meeting the statutory requirements of 35 U.S.C. § 121.

Applicants appreciate the time and effort expended by the Examiner to review this case. Applicants respectfully request reconsideration and favorable action in this case. Applicants have now made an earnest attempt to place this case in condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

Applicants believe that no fees are due with this reply. If any fees are due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 50-1355 of Gray Cary Ware & Freidenrich, LLP.

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Dated: 10/21, 2003

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